

**JOINT LEGISLATIVE SUNSET  
REVIEW COMMITTEE FINDINGS AND  
RECOMMENDATIONS**

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**Review and Evaluation of the  
Board of Barbering and Cosmetology**

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**Report to the  
Department of Consumer Affairs**

**MARCH 1996**

# **JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE**

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## SUMMARY OF RECOMMENDATIONS AND FINDINGS

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ISSUE #1: Should the Board of Barbering and Cosmetology be continued as a separate agency, merged with another board, or sunsetted and have all of its duties, powers and functions turned over to the Department of Consumer Affairs?

### **RECOMMENDATION:**

*The board should not be continued as a separate agency and all of its duties, powers and functions should be turned over to the Department of Consumer Affairs. The transfer of authority of the board to the Department shall be revenue neutral.*

### **FINDINGS:**

#### **A. General Responsibilities, Duties and Powers of the Board**

- 1. The board only recently defined its mission, goals and objectives for individual programs.*
- 2. The board has not been involved in any quality management practices as outlined under the Governor's 1993 Executive Order (W-47-93). As of August 14 & 15, 1995, the board engaged in formal strategic planning to improve its overall effectiveness and efficiency.*
- 3. The board did undertake a performance audit which was published in August, 1995. The auditors found that the board was not fulfilling some of its statutory mandates and also found serious deficiencies in some key areas of its operations and programs. However, it also found some improvements had occurred under the direction of the new executive officer.*
- 4. It has been argued that a historical tension exists between barbers and cosmetologists and has, at times, prevented the board from carrying out its legal mandate to protect the consumer.*
- 5. Although the board did finally pass health and safety regulations, the board has not established professional standards of conduct for any of the seven licensing categories it currently regulates. And, although the board argues that it does not have within its statutory guidelines a specific standard to pursue disciplinary action for unprofessional conduct, it has not taken any action, to date, to pursue specific acts of unprofessional conduct by licensees.*

*6. It has been argued that this board has taken no leadership role in other issues related to the occupation it licenses. This includes the well-known practice of “booth rentals” and “gender-based pricing.”*

*7. The board has not adopted regulations concerning the inspection and operation of tanning facilities in licensed establishments. Nor does it appear that it has taken any action against these facilities for any violations of the Filante Tanning Facility Act of 1988.*

*8. The board has not formulated and adopted policies and guidelines for licensed establishments to assure that they are in conformance with the requirements of the Americans with Disabilities Act (ADA).*

#### **B. Funding and Organization of the Board and Staff**

*1. The board only spends about 45% of its budget on enforcement activity, and almost 35% on its examination, while other boards spend on average about 66% on enforcement and 7% on their examinations.*

*2. The organizational breakdown and workload of the staff appear to focus more on the administration, licensing and examination activities of the board than on the enforcement program.*

*3. Since its formation in 1992, the board has experienced significant turnover in its personnel.*

*4. Staff has not received appropriate training.*

*5. The board currently has almost six months of budget reserve which is not in compliance with recommendations by the Legislative Analysts Office and the Joint Committee on Legislative Budget, to only maintain three months of budget reserve.*

#### **C. Licensing and Application Process**

*1. It does not appear necessary for the board to approve specified course curriculum of schools of cosmetology and inspect schools for safety and health violations; nor is it necessary for the board to license instructors.*

*2. The number of hours and curricula required by the board in a cosmetology and/or barbering school (up to 1600 hours) appears to be an artificial barrier to entering into these professions, and there is no evidence provided which justifies the need for such lengthy training in these particular areas of specialty.*

*3. The board has not complied with the requirement that license renewal applications provide information on whether the licensee is currently employed in the occupation for*

*which they are licensed.*

**4. *The board has not complied with the requirement that it utilize a photograph of the licensee to verify licensure status.***

**5. *The board maintains inadequate security over licenses which it issues.***

**D. Examination Process**

**1. *There is little evidence provided that a licensing examination is necessary for any of the seven licensing occupations.***

**2. *There have been substantial delays in providing the exam to candidates for licensure and this may have caused them to miss certain employment opportunities.***

**3. *There has been a serious problem with cheating on the written licensure examination because of the need to use interpreters during the written examination.***

**E. Continuing Education and Review of Professional Competence**

**1. *The board requires continuing education for barber and cosmetology instructors, but no evidence is provided of the quality and effectiveness of these programs, or that the continuing education improves the competency of instructors.***

## **F. Complaint Process**

- 1. There are very few complaints filed against the 400,000 licensees of the board (only 2,000 to 3,000 complaints per year over the past three years), of which, only about 130 per year were considered serious enough to require formal investigation. Most of the complaints filed were for unlicensed activity or minor health and safety violations, and less than one-third of all complaints were filed by consumers.*
- 2. The board is attempting to improve its enforcement program so complaints can be handled in a more expeditious and efficient manner.*

## **G. Enforcement Process**

### **Cite and Fine -- Unlicensed Activity**

- 1. The board is still in the process of developing a citation and fine program to address unlicensed activity. The board believed that it only had jurisdiction over licensed individuals and licensed establishments, but finally sought clarification from the Department's legal office in 1995. It is unknown when the board will finally implement a cite and fine for unlicensed activity.*

### **Cite and Fine -- Licensed Activity**

- 1. The board only began using its cite and fine authority against licensed individuals and establishments on December 1, 1994, even though authority has existed since July 1, 1992, and then had to withdraw all citations issued and abate all fines assessed from December 1, 1994, to March 20, 1995, because health and safety regulations had not been previously mailed to all licensees.*

### **Inspections**

- 1. The board is currently unable to meet its legal mandate to conduct inspections of all establishments within 90 days after issuance of a license, and annually thereafter to assure compliance with applicable laws and regulations governing the public health, safety and safe operation of establishments.*
- 2. Most of the inspection violations issued (over 70%) were for improper use of (or lack of) disinfection procedures (usually for equipment and instruments) and unsanitary conditions (such as failure to wash hands or not using neckstrip/towel to protect client).*

### **Investigations**

- 1. The board has had few investigations over the past three years, and about 50% of those cases involved unlicensed activity in establishments.*
- 2. There have been substantial delays in completing investigations.*

### **Disciplinary Action**

1. *The board has taken little disciplinary action against licensees over the past three years for incompetence or gross negligence.*

### **Enforcement Costs**

1. *The board's expenditure for all enforcement costs is below the average for other consumer board.*
2. *The board has made little use of its cost recovery authority under Section 125.3 of the Business and Professions Code.*

### **H. Efforts to Improve the Current Regulatory Process**

1. *The board's prior administrative, regulatory and legislative efforts have only minimally improved its operation and increased its ability to operate more in the public interest.*
2. *The board's proposed administrative, regulatory and legislative changes do address some of the basic problems which are identified in this report.*



ISSUE #2: Should the State continue with the licensing and regulation of barbers, cosmetologists, electrologists, estheticians, manicurists, and their establishments, and cosmetology and barbering instructors, and if not, should some other alternative form of regulation be recommended?

### **RECOMMENDATION:**

*It appears as though the Department should only continue with the licensing and regulation of those occupations which are involved in the use of potentially dangerous chemicals or procedures. However, the Department should investigate further whether the current licensing and regulation of barbers, cosmetologists, electrologists, estheticians, manicurists, and their establishments, and cosmetology and barbering instructors, is necessary, or whether some other alternative to regulation would suffice.*

### **FINDINGS:**

- 1. There is some evidence provided that the unregulated practice of barbering and cosmetology could potentially endanger the health and safety of the public and cause significant public harm, but most of the precautions and procedures required or suggested by the board are for the safety and health of the professional not the client/customer.*
- 2. Although use of particular chemicals, or lack of proper sanitary, disinfection, and sterilization procedures could cause injury to consumers, the actual incidence of this problem appears to be extremely rare.*
- 3. The current regulatory program does little to protect the consumer from any of the potential harms due to use of chemicals or in preventing the spread of communicable diseases.*
- 4. The FDA, Cal-OSHA, Cal-EPA, the Department of Health Services and local health agencies, all have individual jurisdiction over the use of toxic substances and chemicals within these establishments, preventing the spread of communicable diseases, and enforcing health and safety laws. They can also inspect these establishments, if necessary, and take appropriate action to ensure they are in conformance with the applicable laws.*
- 5. Consumers are capable of making informed choices about the shops and salons they frequent and the chemicals which are used.*
- 6. The “repeat business” dynamic of the normal marketplace has considerable force here. It is reasonable to assume that no consumer would return to a barber or cosmetologist who is incompetent, and the practitioner would quickly go out of business.*

7. *There are other occupations that have equal or greater risk of transmitting communicable diseases which are not regulated to the same degree as cosmetologists and barbers.*

8. *Civil remedies are available in cases of extreme injury.*

9. *All 50 states license cosmetologists; 49 states license barbers; approximately 48 states license estheticians or consider the practice as that of a cosmetologist; approximately 45 states license or consider the practice of a manicurist as that of a cosmetologist; approximately 30 states license electrologists. However, there have been some states which have reduced the level of regulation for barbering and cosmetology.*

10. *It does not appear that barbers and cosmetologists make judgments which require a high degree of skill or knowledge, however, their judgments are, for the most part, independent of oversight or supervision.*

11. *There is a generally accepted core amount of knowledge, skill and ability that a barber and cosmetologist must have to meet minimum competency requirements, and which are measurable by objective, written and performance standards. However, whether any requirements are necessary beyond attending a qualified school is unclear.*

12. *There are currently two alternatives to the traditional training received in public and/or private institutions offering barbering and cosmetology courses which can be applied toward licensure -- the "apprenticeship program" and the "externship program." Students within schools may also perform similar services on the public.*

13. *There does not appear to be any significant public demand for the regulation and licensing of barbers and cosmetologists.*

14. *There is no evidence that barbers or cosmetologists would be impacted economically if no longer licensed. It is unclear whether consumers may benefit or not from deregulation.*

15. *There may be other alternatives to the current regulatory program.*

- Title Act protection with requirement that graduate from approved school.
- Have schools provide practical and/or written exam.
- Only license those who use potentially dangerous chemicals or procedures.
- Reduced hours of training for cosmetologists and barbers or for those only cutting hair ("hairstylists").

- **Reduced level of inspections and/or only inspect shops or salons which have “independent contractors.”**
- **No inspections of schools or licensing of instructors.**

ISSUE #3: If the board is to continue as a separate agency, what changes should be made to its operation and programs to improve its effectiveness and efficiency?
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**NO RECOMMENDATIONS.**

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## **OVERALL APPROACH TO THE SUNSET REVIEW**

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### **CURRENT APPROACH TO REVIEW**

Legislation enacted in 1994 (Chapter 908/94, SB 2036, McCorquodale), put in place a procedure and schedule for the Legislature to assess the effectiveness of, or need for, state involvement in the 32 occupational areas currently regulated by various boards. ("Board," as used in this document, refers to a "commission," "committee," "examining committee," or "organization" that has the ultimate responsibility for administration of a regulatory program as required under provisions of the Business and Professions Code.)

Pursuant to this new law, independent boards become inoperative, according to a specified schedule, on July 1 of either 1997, 1998, or 1999. The respective statutes are then repealed six months later, on January 1 of either 1998, 1999, or 2000. Thus, the boards and their regulatory authorities "sunset," unless the Legislature passes laws to either reinstate the board or extend its sunset date.

Chapter 908/94 creates the Joint Legislative Sunset Review Committee (JLSRC) to review and analyze the effectiveness of and need for each of the boards. Each board, with the assistance of the Department of Consumer Affairs (DCA), is required to submit to the JLSRC -- 15 months before January 1, of the year its authorizing legislation becomes operative -- an analysis of its regulatory functions and reasons to continue regulatory activities. (Reports from the boards scheduled to sunset in 1997 were, therefore, due by October 1, 1995.)

The JLSRC must hold public hearings during the interim study recess to solicit testimony from the director of Consumer Affairs, the boards scheduled to sunset, the public, and the regulated industries/occupations. During those hearings, the committee members must evaluate and determine whether a board or regulatory program has demonstrated a public need for the continued existence of the board or regulatory program and for the degree of regulation based on the factors and minimum standards of performance listed below:

- (1) Whether regulation by the board is necessary to protect the public health, safety, and welfare.
- (2) Whether the basis or facts that necessitated the initial licensing or regulation of a practice or profession have changed.
- (3) Whether other conditions have arisen that would warrant increased, decreased, or the same degree of regulation.
- (4) If regulation of the profession or practice is necessary, whether existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether the board rules enhance the public interest and are within the scope of legislative intent.
- (5) Whether the board operates and enforces its regulatory responsibilities in the public interest and whether its regulatory mission is impeded or enhanced by existing statutes,

regulations, policies, practices, or any other circumstances, including budgetary, resource, and personal matters.

(6) Whether an analysis of board operations indicates that the board performs its statutory duties efficiently and effectively.

(7) Whether the composition of the board adequately represents the public interest and whether the board encourages public participation in its decisions rather than participation only by the industry and individuals it regulates.

(8) Whether the board and its laws or regulations stimulate or restrict competition, and the extent of the economic impact the board's regulatory practices have on the state's business and technological growth.

(9) Whether complaint, investigation, powers to intervene, and disciplinary procedures adequately protect the public and whether final dispositions of complaints, investigations, restraining orders, and disciplinary actions are in the public interest; or if it is, instead, self-serving to the profession, industry or individuals being regulated by the board.

(10) Whether the scope of practice of the regulated profession or occupation contributes to the highest utilization of personnel and whether entry requirements encourage affirmative action.

(11) Whether administrative and statutory changes are necessary to improve board operations to enhance the public interest.

The JLSRC must also consider alternatives to placing responsibilities and jurisdiction of the board under the Department of Consumer Affairs.

The JLSRC must then report its findings and recommendations to the DCA for its review. The DCA must then prepare a final report including its own findings and recommendations and those of JLSRC. This final report must then be submitted to the Legislature within 60 days, and shall include whether each board scheduled for repeal should be terminated, continued, or re-established, and whether its functions should be revised. If the JLSRC or DCA deems it advisable, the report may include proposed bills to carry out these recommendations.

## **REQUEST FOR INFORMATION AND BOARD REPORT**

As indicated, all boards are required to prepare an analysis and submit a report to the JLSRC “no later than one year plus 90 days prior to the January 1st of the year during which that board shall become inoperative.” (October 1, 1995, was the deadline for those boards which sunset in 1997.)

The analysis and report must include, at a minimum, all of the following:

- (a) A comprehensive statement of the board’s mission, goals, objectives and legal jurisdiction in protecting the health, safety, and welfare of the public.
- (b) The board’s enforcement priorities, complaint and enforcement data, budget expenditures with average- and median-costs per case, and case aging data specific to post and pre-accusation cases at the Attorney General’s office.
- (c) The board’s fund conditions, sources of revenue, and expenditure categories of the last four fiscal years by program component.
- (d) The board’s description of its licensing process including the time and costs required to implement and administer its licensing examination, ownership of the license examination, and passage rate and areas of examination.
- (e) The board’s initiation of legislative efforts, budget change proposals, and other initiatives it has taken to improve its legislative mandate.

In an attempt to reconcile this requirement for information, along with those considerations and factors which the JLSRC must make during its deliberations, a request for information was prepared by JLSRC staff and sent to all boards on July 3, 1995.

The request asked a number of questions about the board’s operations and programs, about the continued need to regulate the particular occupation, and about the efforts which the board has made, or should make, to improve its overall efficiency and effectiveness. There was also a specific request for information dealing with the board’s funding, licensing, examination, complaint and enforcement process for the past four years.

Staff then continued to meet with boards, as needed, to assist them in compiling this information and completing the report.

The report submitted by each board was broken down into three parts. The first part, provided background information dealing with each aspect of the board’s current regulatory program. This included the board’s powers, duties

and responsibilities, its funding and organization, the licensing, examination, continuing education, and enforcement activities of the board for the past four years.

The second part of the report, addressed the issue of whether there is still a need to regulate this particular occupation. The questions addressed by the board were basically those which are asked during any “sunrise review” process, i.e., the current process used by the Legislature to evaluate the need for regulation.

The third part of the report, discusses any regulatory or legislative efforts the board has made, or are needed, to improve its current operation and protection of the consumer.

There are some appendices which were included as part of their report.

There are also appendices (attachments) which, because of their length, or because they were not essential to the overall information contained in the original report, were not provided with the report. They were, however, available to members of the JLSRC upon request.

### **JLSRC REPORT OF FINDINGS AND RECOMMENDATIONS**

The JLSRC must provide to DCA a report of its findings and recommendations after hearings are completed. This document has been prepared in an attempt to meet that mandate.

The findings and recommendations in this report are based on information and testimony received during the hearings conducted by the JLSRC on November 27th, 28th and December 5th, 1995. It also reflects information which was provided in the board’s report, information provided by the Department of Consumer Affairs, a review of the current literature dealing with occupational licensing issues, and a comparative analysis of occupational licensing in other states performed by the Senate Office of Research.

The document begins with a short summary of the current regulatory program and discusses the creation of the licensing act, the board’s budget, revenue and fees collected, an overview of licensing activity and the required examination, and disciplinary/enforcement actions.

Part one, provides an overall evaluation of the board’s operations and programs. This section includes everything from the general responsibilities and duties of the board, to the licensing, examination and enforcement process. There are findings made about each function and activity of the board.

Part two of this document, is a review of the need to regulate this particular occupation. The issues are those which are addressed during the current “sunrise review” process, and those which must be considered by the JLSRC under the current law.

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## SUMMARY OF CURRENT REGULATION

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### Background

- The state Board of Barbering and Cosmetology (BBC) was created in 1992 pursuant to Chapter 1672, Statutes of 1990 (AB 3008). This board was created by merging the former Board of Barber Examiners and the Board of Cosmetology. The board is an autonomous regulatory board under the DCA umbrella, fee supported, special fund agency, and has full policy and enforcement authority over the practices of hair, skin and nail care, and electrolysis, in the state.
- The nine-member board comprises five public members, and four non-public members representing the professions. The Governor appoints all of the non-public members and two of the public members, while the Senate Rules Committee and Assembly Speaker each appoint one public member. The board's current executive officer was selected in March, 1995.
- The Barbering and Cosmetology Act (Act) regulates the practice of barbering, cosmetology and electrolysis. Title protection is provided for the use of the term "cosmetologist" and "barber." The Act also regulates the specialty branches within the practice of cosmetology of skin care and nail care.
- Those exempt from the Act are generally: (1) those involved in the health care field who, within their own scope of practice, may perform particular procedures which would constitute the practice of barbering or cosmetology; (2) commissioned officers in the military service, or their attendants, when engaged in the actual performance of their official duties; (3) persons employed in the movie, television, theatrical, or radio business; (4) persons not receiving compensation and done outside or a licensed establishment; (5) persons who are demonstrating, recommending or selling hair, skin or nail products; (6) students performing services on the public while enrolled in an approved school.
- In addition to consumer protection through licensing and enforcement, the board also defines its mission to include promoting the delivery of quality services and fostering positive communication with the public, the industry, the Department of Consumer Affairs, and the Legislature.



## Budget

- Expenditures for FY 1994-95, were approximately \$7.1 million and revenues were \$8.3 million. The board was authorized for 68.3 staff positions in FY 1994/95.

## Fees

- The board's license is good for two years. The board's fee structure is currently:

Fee Schedule	Current Fee	Statutory Limit
Application, Exam, License Fee	\$50	\$50
Renewal Fee	\$40	\$50
Instructor License Fee	\$50	\$50
Renewal Fee	\$40	\$50
Establishment License Fee	\$50	\$80
Renewal Fee	\$40	\$40

- The board anticipates establishing a fee for the implementation of photographic licensure requirements. Additionally, board staff will be evaluating the need to realign the board's fee schedule which may result in a separate fee for application and examination, and a separate fee for initial license, and establishment of a fee for certification of licensure.

## Qualifications and Licensing

- The board licenses individuals who seek to become barbers, cosmetologists, electrologists, estheticians (skin care practitioners), manicurists, and cosmetology and barber instructors. The board establishes minimum qualifications and levels of competency, to ensure that practitioners possess the skills and qualifications to provide safe and effective services to the consuming public. Approximately 400,000 individuals are currently licensed. The board also licenses the establishments (approximately 44,400) in which these services are performed. Additionally, the board licenses instructors in barber and cosmetology schools, but the schools themselves and instructors are also regulated by the state Council for Private Postsecondary and Vocational Education.
- Generally, an applicant for licensure as a cosmetologist, barber, esthetician, manicurist, or electrologist is required to be not less than 17 years of age, have completed the 10th grade (12th grade for electrologists), completed a specified number of hours in a board approved school (e.g., 1600 for a cosmetologist, 1500 for a barber), or completed an "apprentice program" in a licensed establishment. (The "apprentice program" allows a person to work within a licensed establishment under the supervision of a licensee, and gain the equivalent training and technical instruction as they would in an approved school.)
- The education required, entry age, and hours of training are comparable to other states. Some states do allow less education, such as completion of only 8th grade, lower entry age (16), and less hours of training.

## **Examination**

- The board administers fourteen (14) different examinations, one written and one practical for each of the seven licensing categories -- cosmetologists, barbers, manicurists, barber instructors, estheticians, electrologists, and cosmetology instructors. Passage rates for FY 1994/95 year-to-date are 67% for barbers, 50% for cosmetologists, 43% for manicurists, 63% for estheticians, 65% for electrologists, 24% for cosmetology instructor (barber instructor pass rate not available).

## **Enforcement**

- The board conducts routine health and safety inspections of establishments, and has the authority to issue citations and assess fines to individuals or establishments that are found to be in violation of the board's laws and regulations, including unlicensed activity. The board also receives and processes consumer complaints. Options for disciplinary actions range from mediation to a warning letter to a citation/fine, to suspension, and ultimately, revocation of the practitioner or establishment's license.
- The board reports the following year-to-date enforcement statistics for FY 1994/95: Complaints received, 3005; Inspections, 30,222; Disciplinary actions, 21; Licenses revoked, 7

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**1.**  
**EVALUATION OF BOARD'S OPERATIONS  
AND PROGRAMS**

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ISSUE: Should the Board of Barbering and Cosmetology be continued as a separate agency, merged with another board, or sunsetted and have all of its duties, powers and functions turned over to the Department of Consumer Affairs?

**RECOMMENDATION:**

*The board should not be continued as a separate agency and all of its duties, powers and functions should be turned over to the Department of Consumer Affairs. The transfer of authority of the board to the Department shall be revenue neutral.*

**FINDINGS:**

**A. General Responsibilities, Duties and Powers of the Board**

***1. The board only recently defined its mission, goals and objectives for individual programs.***

- The board adopted goals and objectives for the 1993/94 fiscal year. However, the board had not made a concerted effort to develop implementation plans to meet these goals. The board also had not formally adopted goals and objectives for the 1992/93 and 1994/95 fiscal years. Further, there was minimal follow-up to the fiscal year 1993/94 goals and objectives, thus reducing their benefit to the board.
- The board submitted with its report a listing of goals and objectives, and also included its mission statement and vision statement. It is unclear, however, whether the board has formally adopted these goals, objectives, mission and vision statements, and no information is provided on how they will be implemented.

***2. The board has not been involved in any quality management practices as outlined under the Governor's 1993 Executive Order (W-47-93). As of August 14 & 15, 1995, the board engaged in formal strategic planning to improve its overall effectiveness and efficiency.***

- The board has evaluated options with regard to adopting total quality management philosophies and practices per the Governor's 1993 Executive Order, but, as yet, has not formally adopted new management practices such as performance-based budgeting. The board claims that it has identified a balanced set of measurements that are focused on its mission and vision for the future, but that a significant amount of further work is necessary to develop a performance-based budget by linking the mission and vision with

the performance measurement standard. Most importantly, the board must obtain assurances from management and staff that they understand the performance measures and accept the relating objectives.

- In mid-August, 1995, the board took steps in addressing its mission and vision by conducting a strategic planning session. Goals and objectives were discussed, but as indicated earlier, it does not appear that the board has adopted any specific set of goals or objectives to be implemented.

***3. The board did undertake a performance audit which was published in August, 1995. The auditors found that the board was not fulfilling some of its statutory mandates and also found serious deficiencies in some key areas of its operations and programs. However, it also found some improvements had occurred under the direction of the new executive officer.***

- The board recently had a performance audit conducted in accordance with Government Auditing Standards. The audit period was for three years ending June 30, 1995. The board supplied the committee with a copy of this report, and staff has utilized it in preparing this background paper. The auditors found that the board's operations, prior to hiring the current executive officer, were hampered by excessive staff turnover, low employee morale, inefficient allocation of personnel, and low productivity. "This resulted in the board being perceived negatively by its own staff, other states, and the Department of Consumer of Affairs."
- The auditors claim that the hiring of the current executive officer has resulted in significant operational improvements being made by the board. "Surveyed employees consistently stated that staff morale has increased and that the perception of the board by the Department, industry groups, and licensee population has improved." Some of the accomplishments cited include a review of board's examination process by DCA, reorganization of the Enforcement Division, correction of some problems with the cite and fine program, diverting its consumer information calls into a single toll-free 800 number, and attempts being made to convert its written examination to an electronic format.
- However, the audit still found serious deficiencies in several key areas of the board's operations and programs. These included issues involving personnel, a lack of short and long-term strategic planning by the board, and problems involving the examination and enforcement process. (Specific concerns involving each of these areas are discussed further in this report.)

***4. It has been argued that a historical tension exists between barbers and cosmetologists and has, at times, prevented the board from carrying out its legal mandate to protect the consumer.***

- As noted by the Center for Public Interest Law (CPIL), the board is the product of the merger of the former Board of Barber Examiners and the Board of Cosmetology. Due to extraordinary industry opposition (particularly by barbers), merger did not come easy.

Although recommended in two government studies in 1978 and 1979, and accomplished in at least eleven other states by 1987, California's merger bill did not pass until 1990, and did not take effect until July 1, 1992.

- AB 3008 (Eastin) (Chapter 1672, Statutes of 1990), the "merger bill," required both of the prior boards to jointly draft new health and safety regulations for the merged board prior to the merger date of July 1, 1992, so that the new board would be able to adopt regulations soon after its creation. However, as indicated by CPIL, the historical tension between the barber and cosmetologist professions prevented either board from agreeing on new regulations prior to their expiration, and prevented the newly formed board from adopting its own regulations in a timely fashion. The board's new health and safety regulations were not approved until October 24, 1994 -- over two years after its creation and four years after passage of the merger bill.
- CPIL argues, that this is but one example of when the board has been paralyzed into inaction because of the long-standing, deep-seated hostility and competition between barbers and cosmetologists. It is the opinion of CPIL, that the current board structure will not result in regulation in the public interest because of the trade-specific biases which current professional members of the board have.

***5. Although the board did finally pass health and safety regulations, the board has not established professional standards of conduct for any of the seven licensing categories it currently regulates. And, although the board argues that it does not have within its statutory guidelines a specific standard to pursue disciplinary action for unprofessional conduct, it has not taken any action, to date, to pursue specific acts of unprofessional conduct by licensees.***

- CPIL argues that the board does literally no standard-setting for the any of the seven licensing categories it currently regulates. An example of one of the problems which has occurred, due to a lack of definition concerning professional conduct, is the inability of the board to take legal action for what would normally be considered as unprofessional conduct by a licensee.
- The board claims that it does not have within its statutory guidelines a specific standard to pursue disciplinary action for unprofessional conduct. There have been a few instances where the board has attempted to pursue disciplinary action against a licensee(s) for violations occurring within a licensed establishment which are not directly related to the practice of barbering, cosmetology, and electrology. Examples of such violations include the sale and use of illegal drugs, prostitution, or practices of medicine. The board was unsuccessful in taking disciplinary action because the types of violations, as explained by the Attorney General's Office, are not specifically defined in the Barbering and Cosmetology Act as acts of unprofessional conduct. The board is now considering pursuing legislation to define specific acts which would amount to unprofessional conduct, even though some of this "unprofessional" activity has probably been occurring for some time.

**6. *It has been argued that this board has taken no leadership role in other issues related to the occupation it licenses. This includes the well-known practice of “booth rentals” and “gender-based pricing.”***

- CPIL argues that the board has not taken a leadership role in trying to prevent well-known practices within the cosmetology industry which are harmful to the State and the public. One of these practices involves the renting of booths to cosmetologists rather than hiring them as employees and withholding sums for personal income tax and unemployment insurance. This long-standing practice has created an “underground economy” within the cosmetology profession, and deprives the state of revenue. Although the predecessor boards considered proposed regulations prohibiting this practice, this board has taken no action on the issue.
- Another issue plaguing the cosmetology industry is “gender-based pricing;” practitioners frequently charge women more than men for individual services. There has been recent legislation to try and address this issue, but CPIL argues that this legislation may not have been necessary had the board taken affirmative action to warn its licensees that gender-based pricing is discriminatory and violates the state Unruh Civil Rights Act.

**7. *The board has not adopted regulations concerning the inspection and operation of tanning facilities in licensed establishments. Nor does it appear that it has taken any action against these facilities for any violations of the Filante Tanning Facility Act of 1988.***

- As of January 1, 1994, the board was given authority to inspect tanning facilities within establishments licensed by the board (AB 310; Statutes of 1993, Chapter 521, commencing with Section 7414.1 of the Business and Professions Code). The board was required to conduct a study of the tanning facilities in the State of California and report to the Legislature no later than July 1, 1994. The purpose of this report was to determine whether or not tanning facilities in board licensed establishments were in “substantial compliance” with the Filante Tanning Facility Act of 1988. This act regulates these types of facilities and has specific requirements which operators must follow when providing a “tanning device” for use by the public. (See Section 22700, et seq. of the Business and Professions Code.) The board was also authorized to adopt regulations (not mandated) concerning the operation of these tanning devices within licensed establishments.
- A report was submitted to the Legislature in July of 1994. The report indicated that the board was only able to identify about 189 tanning facilities located in licensed establishments, while they estimated there were about 933 tanning salons statewide (this number was arrived at by looking through telephone directories). Inspections were conducted on the 189 establishments and it was found that a minimum of 77% were in substantial compliance with the Filante Tanning Act. Only 50% however distributed literature to educate consumers about the potential risks associated with tanning services. There were no instances of injuries which were reported. (An insurance company which insures approximately 96% of tanning facilities in the state estimated about 7 injury

claims annually.)

- The report also questioned the need for regulation by the board since many of the tanning facilities were not within their jurisdiction (such as health clubs, spas, private businesses, etc.). The board recommended that the appropriate regulatory agency would be the Department of Health Services. It does not appear as though any further action was taken by the board concerning this issue, even though they had a legal mandate to inspect tanning devices located in licensed establishments and assure continued compliance with the Filante Tanning Facility Act. There was no information provided which indicated that any infraction (as authorized by Section 7414.2 of the B&P Code) was ever issued by the board against a licensed establishment for being in violation of this Act.

**8. *The board has not formulated and adopted policies and guidelines for licensed establishments to assure that they are in conformance with the requirements of the Americans with Disabilities Act (ADA).***

- The board explains that enforcement of the ADA, as it relates to facilities that may be licensed, is not within the jurisdiction of the licensing boards and, therefore, policies and guidelines are not necessary. However, the board is in a unique situation where they inspect establishments to assure they meet a number of health and safety requirements. It would not be unreasonable to assume that the board should be responsible for assuring that other violations of the law are not occurring. The federal Department of Justice, which enforces the ADA, will only inspect a facility if a complaint is filed with their agency. The board is in a better position to advise licensees on the requirements of ADA, and report violations, if appropriate policies and guidelines were developed and made known to their licensees.

**B. Funding and Organization of the Board and Staff**

**1. *The board only spends about 45% of its budget on enforcement activity, and almost 35% on its examination, while other boards spend on average about 66% on enforcement and 7% on their examinations.***

**2. *The organizational breakdown and workload of the staff appear to focus more on the administration, licensing and examination activities of the board than on the enforcement program.***

- Although difficult to ascertain, it appears as though a substantial number of staff are assigned to the examination, administrative and licensing activities of the board, and a smaller ratio of staff assigned to the enforcement program (possibly 3 to 1). The performance audit indicated that staff, who were interviewed, believed that the board needs to hire more staff to effectively carry out its mission and eliminate the backlog of work. The board is asking for an augmentation in the Budget for FY 1996/97, of \$279,000 and 4.8 personnel years for the cite and fine program, \$279,000 and 3.8 personnel years for increased inspections, and an augmentation of \$241,000 and 4.2 personnel years for practical exam costs. Even if these changes are approved, it would

appear that there would still be a high ratio of support staff involved in the examination program as compared to the enforcement program, and a high ratio of support staff to actual inspectors within the enforcement program.

***3. Since its formation in 1992, the board has experienced significant turnover in its personnel.***

- The turnover rate (calculated as the number of employees leaving the board, divided by budgeted personnel years) has been as follows over the last three fiscal years: FY 1992/93 -- 20%; FY 1993/94 -- 45%; and, FY 1994/95 -- 50%. This was apparently caused by the inadequate leadership, lack of communication, and lack of direction of the prior executive officers. Further research showed that the turnover ratio significantly increased from July 1, 1992, through approximately March 1995, which is consistent with the appointment of the current Executive Officer. Results of staff interviews and employee surveys, conducted as part of the performance audit, confirmed that employee morale had generally improved since March, 1995.



**4. *Staff has not received appropriate training.***

- As indicated in the performance audit, board personnel have not received timely or proper training on the policies and procedures of the board, the Department, nor specific training for the job classification and related duties they are assigned to. The staff have also not been informed or educated about the mission, goals, and objectives of the board. This has resulted in inefficiencies in employee performance, noncompliance with the board and Department policies, and failure to meet legislated mandates.

**5. *The board currently has almost six months of budget reserve which is not in compliance with recommendations by the Legislative Analysts Office and the Joint Committee on Legislative Budget, to only maintain three months of budget reserve.***

- As of July 1, 1995, the board's reserve was \$4.8 million while expenditures for FY 1994/95 were \$7.1 million. Projected expenditures for FY 1995/96 is \$9.2 million and projected reserves would be \$4.7 million. This would still amount to approximately six months of reserve being maintained for this board rather than the three-months which was suggested by LAO and the Joint Committee on Legislative Budget as a prudent reserve. The board's projected expenditures for FY 1996/97 are \$10.9 million, with \$2.8 million in reserve. If approved, this would bring the board into conformance with the three-month requirement. However, the intent of the recommendation by LAO and the Budget Committee was that the board attempt to lower its reserve by June 30, 1996, through reduced fees if necessary, to bring the reserve down to 25% (or three months) of appropriations authorized for FY 1995/96. (The Board of Accountancy, for example, has a ten month reserve and voted on a plan to reduce fees to bring their reserve down to a three month level by June 30, 1996.)

## C. Licensing and Application Process

**1. *It does not appear necessary for the board to approve specified course curriculum of schools of cosmetology and inspect schools for safety and health violations; nor is it necessary for the board to license instructors.***

- There are approximately 200 cosmetology, barbering, and electrology schools in California. As indicated, the primary responsibility for licensing these schools is vested with the Council for Private Postsecondary and Vocational Education (Council) since 1991. The Council is responsible for the oversight and approval of all private colleges, universities and vocational educational institutions, and for developing state policies for private postsecondary education in California. The Council reviews and approves all private degree granting, vocational and non-degree institutions operating in California and represents this sector of education in all state level planning and policy discussions about postsecondary and vocational education.
- The “Oversight and Approval Program” of the Council reviews these schools, issues approvals, investigates complaints and ensures that they meet the 13 standards as mandated by Section 94311(a) of the Education Code. When making site visits, it also reviews curriculum guidelines, instructional materials and the quality of training and education, to assure that the course or program of instruction will reasonably and adequately achieve the objective of which the course or program is offered. Every instructor’s record is reviewed to assure they have adequate academic, experiential, and professional qualifications to teach the course or to perform the duties that the person is assigned and satisfies all standards established by the Council by regulation, and holds an applicable and valid certificate of authorization for service issued by the Council in the specified competence areas in which the individual will serve. The Council must also assure that the school complies with all local city, county, municipal, state and federal regulations relative to safety and health of all persons upon the premises such as fire, building, and sanitation codes.
- The board’s statutory authority, to specify what course of instruction will be followed by cosmetology, barbering and electrology schools, appears to be unnecessary in light of the oversight provided by the Council, and is nothing more than a duplication of efforts in assuring the appropriate curriculum is provided. The Council has experience reviewing a number different types of trade schools and approving the course of instruction, training, and study provided by these schools.
- The same is true for the licensing of instructors. The Council uses its own criteria in evaluating instructors and providing a “certificate of authorization” for service. The licensing of the instructor by the board is one of the considerations made by the Council in granting a certificate, but it is not binding on the Council, and a decision could still be made by the Council to approve a certificate even though a license may not be granted. Because of this conflict concerning jurisdiction, the board’s statutory authority provisions will sunset on July 1, 1997. However, the board is still recommending testing and licensure of all instructors as a prerequisite to certification by the Council, and has

indicated they would like to remove the sunset date.

- The board recommends that its enforcement authority, relative to school clinic areas where services are performed on the public, be expanded to provide a mechanism for disciplining schools who are not in compliance with health and safety laws. As indicated, the Council currently has authority to deny approval to operate a school unless they comply with all local, state and federal regulations relative to safety and health. Again, dual jurisdiction does not appear necessary to regulate the activities of schools relative to health and safety issues.

***2. The number of hours and curricula required by the board in a cosmetology and/or barbering school (up to 1600 hours) appears to be an artificial barrier to entering into these professions, and there is no evidence provided which justifies the need for such lengthy training in these particular areas of specialty.***

- As indicated, the board mandates the number of clock hours an applicant must have completed in an approved course, including the minimum hours of technical instruction and minimum number of practical operations hours for each subject. Under current law, barbers must complete 1,500 hours, cosmetologists 1,600 hours, electrologists 600 hours, estheticians 600 hours, and manicurists 350 hours.
- CPIL raised two issues concerning the coursework and number of hours required by the board:
  - ⇒ Although the board emphasizes its role in preventing “public health and safety hazards” by requiring extensive training in disinfection and sanitation standards, only 20 hours of the 1,600 required for cosmetologists relate to disinfection and sanitation.
  - ⇒ The coursework requirements translate into an extraordinary amount of money for the schools which offer them to the “captive audience” would-be licensees. Most of these schools are for-profit enterprises, and profits are assured due to the state-required curricula and the availability of federal loans to students. Further, a significant portion of the required coursework involves practical training on consumers who frequent the schools to obtain services from novices at a lesser rate than they would pay to a licensee. The schools charge anywhere from \$1,500 to \$5,000 in tuition (depending on the type of program); on top of tuition, the schools rake in thousands of dollars from consumers who pay the schools to have the trainees perform services.
- CPIL argues that the schools are clearly the primary -- and perhaps only-- beneficiary of the current licensure requirement. As stated by CPIL, “Abolition of the licensing requirement, and the required school completion, would force these schools to become more competitive in terms of tuition rates, a flexible and relevant curriculum (rather than board-required curriculum), and practical training opportunities. Undoubtedly, many would-be licensees would still choose to attend a school. But they would pay less, it

would take less time, and they would have more choice in terms of curriculum and areas of specialty.”

- The performance audit also questioned the current curriculum and clock hour requirements. There was no evidence that an occupational analysis had been performed, to determine whether the specific course of instruction and training is necessary so that the applicant will have the appropriate knowledge, skills and abilities to practice their trade safely and effectively upon graduation from a school.
- Again, it would appear as if the Council could approve the appropriate curriculum and hours required for completion of a course of instruction in cosmetology, barbering and the other related specialties. If necessary, the Council could use an advisory panel or committee to set appropriate standards.

***3. The board has not complied with the requirement that license renewal applications provide information on whether the licensee is currently employed in the occupation for which they are licensed.***

- As pointed out in the performance audit, the board is mandated by Business and Professions Code Section 7416, to modify its license renewal process to determine whether the licensee is currently employed in the occupation. The board has not complied with this law. The audit recommends the board should amend the renewal application for the license renewals to have a box indicating whether the licensee is currently working in the profession or not. The audit also recommends that the board consider creating an inactive license category with a modest fee to encourage licensees to keep their license current, which would result in more revenue being generated for the board, and relieve the board of the workload necessary to check delinquent license renewals.

***4. The board has not complied with the requirement that it utilize a photograph of the licensee to verify licensure status.***

- Section 7396 of the B&P Code (AB 3008, Chapter 1672, Statutes 1990) requires licenses to contain a photograph of the licensee. The board can establish the method or methods as it deems appropriate for utilizing a photograph of the licensee to verify licensure status, and charge an additional fee for the processing of the photographic license.
- The board failed to take the necessary actions to implement this requirement which went into effect on July 1, 1992. A chronology of the photographic license project was presented to the JLSRC. It would appear as though the board and former executive officer did not complete the RFP in a timely fashion, and ignored recommendations from staff and the Department of Finance to pursue the RFP immediately. Because of this, the \$1.9 million appropriation for this project reverted to the board’s fund reserve and the board was required to submit a BCP for one-time funding in FY 1995/96. However, because of further delays in completing the RFP, and the resignation of the former executive officer, no further action took place until March of 1995.

- In April, the current executive officer, the board, and DCA began working together to issue a solicitation and bid for a vendor to implement the photographic license project, but the project is now delayed because of formal protests being made to the bidding process of DCA. The board is still requesting a two-year augmentation of \$2.6 million in the 1996/97 Budget to fund the implementation of this project.

**5. *The board maintains inadequate security over licenses which it issues.***

- In accordance board procedures, licenses are issued daily to candidates who successfully pass the examination. Therefore, the board prints valid licenses for all examination candidates and sends them to the exam sites prior to the date the applicant is scheduled to take the exam. The license is to be issued if the applicant is successful or otherwise voided if they fail the exam. Based upon observations and interviews conducted during the performance audit,

voided licenses are not reconciled with the daily log for the exam site responsible for tracking results in a timely manner. The licenses could be misappropriated by staff and not detected because of this delay in review.

- There is also a possibility for licenses to be issued incorrectly without detection. This is because there is no review of the successful candidates' examination sheets by personnel independent of the examination facility. Each exam facility also maintains a stock of blank licenses to be used in cases where the exam site does not have a preprinted license for successful candidates. The controls over these licenses is compromised because of a large number of people who have access to them.

**D. Examination Process**

**1. *There is little evidence provided that a licensing examination is necessary for any of the seven licensing occupations.***

- There has been no "occupational analysis" performed on any of the examinations required by the board. There has been no formal validation study performed for the practical examination component. Thus, there is no indication that these examinations test the job-related knowledge, skills and abilities necessary to safely practice the specific profession. However, it should be noted, that schools are not required to test for minimum skill and abilities prior to graduation, and that the board is currently having an "occupational analysis" performed by the Department.

**2. *There have been substantial delays in providing the exam to candidates for licensure and this may have caused them to miss certain employment opportunities.***

- As discussed in the performance audit, the examination scheduling process currently has a significant backlog of up to three months before candidates can take their licensing examination. The one exception is pre-applicants, who are mandated to be scheduled within ten days of graduation if they pre-apply to the board to take the examination. However, the board has been unable to meet this mandate since the pre-application

process was created in July 1, 1992. (The Department was responsible for monitoring the board's compliance with the 10 working day mandate and to report to the Legislature if there was an absence of compliance, and recommend actions to achieve compliance by July 1, 1994. The JLSRC has not received any findings or recommendations by the Department to date.)

- The Legislature has, over the past three years, also received complaints from constituents concerning delays in the examinations provided by the board. Some indicated that they lost job opportunities and were unable to seek employment for up to eight months because of delays in scheduling them for the exam.
- The board has steadily improved since 1993 in the scheduling of the its examinations. The average waiting time has decreased from 21 weeks to 10 weeks. The board also voted recently to administer the written examination electronically with a goal of July 1, 1996. This may alleviate some of the delay in providing the "written" portion of the exam, but there still may be some delay associated with providing the "practical" part of the exam.

***3. There has been a serious problem with cheating on the written licensure examination because of the need to use interpreters during the written examination.***

- The board currently has a serious problem with cheating on the written licensure examination. The problems have primarily occurred as a result of the use of interpreters during the written examination. The board allows non-English speaking applicants to bring their own interpreters to the written and practical examinations. This practice has resulted in the board's examination being subverted and has exposed non-English speaking applicants to unscrupulous interpreters who charge exorbitant fees for their services (\$500 to \$1000). For example, statistics maintained from January 1995 through July 1995 illustrate that the board experiences an average of 30 to 50 cheaters per month (a total of 289 incidents of cheating during this period).
- The board is taking steps to deal with this problem. One solution, as indicated earlier to deal with delays in scheduling of the exam, is to administer the written examination electronically by a qualified outside vendor. This will enable the board to offer the written examination in Spanish and Vietnamese (via electronic translation), thus eliminating much of the need for interpreters for the written portion of the exam. It is not clear, however, whether the board will still have problems with cheating on the practical portion of the examination.

**E. Continuing Education and Review of Professional Competence**

***1. The board requires continuing education for barber and cosmetology instructors, but no evidence is provided of the quality and effectiveness of these programs, or that the continuing education improves the competency of instructors.***

- The board has a continuing education requirement for renewal of a license, but only for the categories of Barber and Cosmetology Instructors. Each licensed instructor must

complete at least 30 hours of continuing education in the teaching of vocational education during each two-year licensing period. This requirement does not apply to an instructor who holds a credential to teach vocational education full time in a public school. The board approves the continuing education provider. (The providers are generally any local education agency currently approved by the California Commission on Teacher Credentialing and private and postsecondary schools accredited by the Western Association of School and Colleges.)

- The board does not have any evidence that the continuing education for instructors has improved competency. Nor does the board have jurisdiction over the schools, or the quality of education provided by the schools, since the jurisdiction was transferred to the Council for Private Postsecondary and Vocational Education. The board argues, however, that the Council uses the continuing education classes approved by the board as a gauge for certification of instructors to teach in a school. The requirement for continuing education will sunset on July 1, 1997, along with other oversight provided by the board over instructors. This would seem an appropriate step if the Council is to assume all responsibility for reviewing the qualifications of instructors. Any future requirements or need for continuing education could be determined by the Council.

## **F. Complaint Process**

***1. There are very few complaints filed against the 400,000 licensees of the board (only 2,000 to 3,000 complaints per year over the past three years), of which, only about 130 per year were considered serious enough to require formal investigation. Most of the complaints filed were for unlicensed activity or minor health and safety violations, and less than one-third of all complaints were filed by consumers.***

- The board received 1,935 complaints in FY 1992/93, most of which concerned establishments and manicurists. Almost half of these complaints were board initiated or from licensees for unlicensed activity or health and safety violations found during inspections. Only 115 of these complaints were considered serious enough to issue a citation and fine, or seek disciplinary action. In FY 1993/94, the board had 3,406 complaints filed, most of which concerned establishments rather than particular licensees. Less than one-third of the complaints were initiated by consumers. Only 106 of these complaints were considered serious enough for the board to issue a citation and fine or take other disciplinary action. In FY 1994/95, the board had 3,005 complaints filed, most of which again concerned establishments. The board initiated at least two-thirds of all complaints. Only 175 complaints were considered serious enough for the board to issue a citation and fine or take other disciplinary action.

***2. The board is attempting to improve its enforcement program so complaints can be handled in a more expeditious and efficient manner.***

- As indicated in its performance audit, the board has reorganized its Enforcement Division effective May 1, 1995, to mirror the “client service team” approach being used by the Department in order to ensure a more efficient and effective enforcement program. Prior to this reorganization, the Division was separated into specialized units,

each assigned a specific task. This structure led to uneven workload distribution resulting in major backlogs in certain areas and unacceptable delays in complaint turnaround. The reorganization establishes teams, which include all facets of the enforcement operation within the board. Through this reorganization, it is anticipated that the board will be able to reduce backlogs in the complaint process, as well as respond to complaints, particularly in the areas involving consumer harm, in a much more timely manner.

## **G. Enforcement Process**

### **Cite and Fine -- Unlicensed Activity**

***1. The board is still in the process of developing a citation and fine program to address unlicensed activity. The board believed that it only had jurisdiction over licensed individuals and licensed establishments, but finally sought clarification from the Department's legal office in 1995. It is unknown when the board will finally implement a cite and fine for unlicensed activity.***

- Section 148 of the Business and Professions Code, which allows a board to establish by regulation an administrative citation and fine system for unlicensed practice, went into law on January 1, 1993. This administrative citation and fine system had to meet all the requirements of Section 125.9, which allows for the establishment of an administrative citation and fine system for violations by a licensee of any of the provisions of their licensing act. One of the provisions of Section 125.9, subdivision (e), formerly limited the section's application to boards without "existing" cite and fine authority. The board had its own cite and fine authority which went into effect on July 1, 1992 (Section 7406 et seq., Article 12), but it only seemed to include authority to take action against licensees of the board. The board did not try to seek clarification of this issue until 1995, almost two years after other boards were involved in passing regulations to establish a cite and fine program for unlicensed activity pursuant to Section 148.
- On August 17, 1995, the Department issued a legal opinion which said that the board could adopt regulations for a cite and fine program against unlicensed practice, because subdivision (e) of Section 125.9 had been removed by statute in a 1995 budget trailer bill. However, the board does not indicate when regulations will be submitted for approval to the Office of Administrative Law, or when they might expect the program to go into effect.
- The board states that it is in the process of developing an infraction /citation program to address unlicensed activity. This program, once implemented, would allow the board's inspectors to issue infraction citations (vs. misdemeanor citations) to unlicensed individuals. The board states that the infraction citation will require a court appearance and will, in most instances, result in conviction with monetary penalties and/or informal probation. It is not clear whether this program is to be used in conjunction with an administrative cite and fine program, or instead of. It was the intent of the Legislature in passing Sections 146 and 148, that boards be able to pursue both criminal and



administrative remedies in dealing with unlicensed activity.

### **Cite and Fine -- Licensed Activity**

***1. The board only began using its cite and fine authority against licensed individuals and establishments on December 1, 1994, even though authority has existed since July 1, 1992, and then had to withdraw all citations issued and abate all fines assessed from December 1, 1994, to March 20, 1995, because health and safety regulations had not been previously mailed to all licensees.***

- The board finally implemented its “Administrative Cite and Fine Program,” as it pertains to licensed individuals and establishments on December 1, 1994, even though specific statutory authority was granted to the board on July 1, 1994. (The board also had prior general authority which has existed for all boards since 1986, under Section 125.9 of the Business and Professions Code.)
- The board was ordered by the Superior Court of Sacramento County, effective March 21, 1995, to cease issuing citations and/or fines for violations of health and safety regulations, because Business and Professions Code

Section 7312(e) requires the board to furnish each licensee a written copy of the rules and the specific health and safety regulations had not been mailed previously to all licensees.

- The board mailed the new health and safety regulations to all licensees on April 5, 1995, to comply with Section 7312(e). The board had to withdraw all citations issued and abate all fines assessed for the period of December 1, 1994 through March 20, 1995. The estimate of fines assessed during the period was \$190,000. Fines collected during this period will have to be refunded to the individual licensee.
- Since implementation of the cite and fine program, 10,552 total citations were issued, and 3,685 citations were issued for unlicensed activity. Total fines assessed were \$810,425 and total fines collected was \$194,700. [As indicated, most of this will have to be returned because of the court order. However, the board provided an update of the total amount of fines assessed from April 21, 1995 through October 31, 1995. Out of \$616,450 total fines assessed, approximately \$278,525 is collectable (since \$308,225 were “correctable fines” and \$29,700 were fines under appeal). The board has collected \$150,880 or 54% of the collectable fines.]

### **Inspections**

***1. The board is currently unable to meet its legal mandate to conduct inspections of all establishments within 90 days after issuance of a license, and annually thereafter to assure compliance with applicable laws and regulations governing the public health, safety and safe operation of establishments.***

- There was an estimated 44,431 licensed establishments as of June 30, 1995. The board was able to conduct only 30,200 inspections in 1994/95, and only 15,900 of these were “routine” inspections. There are only 15 inspectors and two supervising inspectors to inspect all of these shops and salons, and only 7 inspectors to inspect over 16,000 establishments in southern California. (There were 4 inspector vacancies as of December, 1995.)
- The board is currently not meeting its legal mandate of performing annual inspections for all licensing establishments, and performing initial inspections within 90 days after issuance of an establishment license, as required by Section 7353 of the Business and Professions Code. Based upon the estimated number of licensed establishments, the board is only able to make about 40% of its routine annual inspections of establishments. The performance audit suggested that this may be due to a lack of inspectors and the increase in time required to perform inspections as a result of implementing the cite and fine program. There was also little information provided on how often, if at all, the board is able to perform follow-up inspections to assure that cited violations have been corrected within the establishment.
- The board provided information on how many inspections were being conducted per day/per month by inspection staff. Overall average inspections per day decreased once the cite and fine program was implemented. The average number of inspections per day/per inspector territory, ranged from a high of between 12-20 before the implementation of cite and fine, to a low of 6-12 after implementation of cite and fine. [A total of the number of average inspections per day, times the number of approximate days within a year for inspection of establishments, averages out to about 35,000 inspections for FY 1994/95 (total of 167 average inspections per day times 210 days). There were also some vacant positions during this time which may account for the total inspections reported by the board at 30,200 for FY 1994,95. It appears as if one inspector will be able to accomplish at least 10 inspections per day under the new cite and fine requirements. If this is true, the board may need more than the 4 inspectors it has requested for FY 1996/97.

***2. Most of the inspection violations issued (over 70%) were for improper use of (or lack of) disinfection procedures (usually for equipment and instruments) and unsanitary conditions (such as failure to wash hands or not using neckstrip/towel to protect client).***

- Of the 65,384 violations cited in FY 1994/95, 45,838 were for not following the correct disinfection or sanitation procedures (incorrect, and lack of, disinfection and/or sterilization procedures for instruments and equipment, improper storage of instruments, equipment and supplies, unsanitary conditions and equipment within the establishment, failure to use a neckstrip/towel to protect the client, failure to wash hands prior to beginning service on a client).
- Other violations included displaying an expired or invalid license (7,507); operating an unlicensed establishment (4,097); health and safety rules not posted (2,785); lack of

soap, towels, and/or running water for handwashing purposes (1,441); problems associated with the restroom facilities (1,562); employing unlicensed individuals (681); use of illegal instruments, products or methods (420); no photographic identification (389); no licensee-in-charge

(391); no drinking water or illegal use of barber pole (133); not meeting junior operator or apprenticeship requirements (84); and refusal to allow, or interference with, the inspection (56).

### **Investigations**

***1. The board has had few investigations over the past three years, and about 50% of those cases involved unlicensed activity in establishments.***

- Only 115 cases were investigated in FY 1992/93, 106 cases in FY 1993/94 and 175 cases in FY 1994/95. About 50% of these cases involved establishments where unlicensed activity was occurring.

***2. There have been substantial delays in completing investigations.***

- As indicated in the performance audit, the majority of cases that involve consumer harm and are disciplined take over one year to complete and, in some cases, considerably longer. The lengthy time lag is a result of numerous steps that have to be completed in the investigative process, plus the use of the Department's Division of Investigation, use of expert witnesses and the use of the Attorney General's Office.

### **Disciplinary Action**

***1. The board has taken little disciplinary action against licensees over the past three years for incompetence or gross negligence.***

- Out of 400,000 licensees, an average of only 22 formal accusations were filed each year for the past three years, and an average of only 3 licenses were revoked (there were no revocations in FY 1992/93, 7 revocations in FY 1993/94, and 5 revocations in FY 1994/95). An average of about 10 revocations were stayed, or probation was granted, over the past three years. Only about one-third of the accusations filed were for incompetence or gross negligence, while over half of all accusations filed dealt with unlicensed activity within establishments.

### **Enforcement Costs**

***1. The board's expenditure for all enforcement costs is below the average for other consumer boards.***

- The board committed approximately \$3.1 million in FY 1993/94, and \$3.2 million in FY 1994/95, to its enforcement program for consumer protections. This was about 45% of its total expenditures for both fiscal years -- much less than other boards (about 20% less) which regulate practitioners who can cause severe harm to the public. The board is using a larger portion than most boards for its examination; about 20% of its budget versus 7% on average for other boards.

***2. The board has made little use of its cost recovery authority under Section 125.3 of the Business and Professions Code.***

- In FY 1993/94 and in FY 1994/95, the board requested cost recovery for approximately \$19,000 each fiscal year. It collected about \$12,000, or between 35% to 40% of its enforcement costs.

**H. Efforts to Improve the Current Regulatory Process**

***1. The board's prior administrative, regulatory and legislative efforts have only minimally improved its operation and increased its ability to operate more in the public interest.***

- The following is a listing of some of the more substantive changes made by the board to improve its overall efficiency and effectiveness so that it may operate more in the public interest. It should be noted, however, that many of the following changes have only been recently adopted or are still "in progress":
  - ⇒ Use of cite and fine authority against licensees only. (April, 1995)
  - ⇒ Major reorganization of Enforcement Program. (March, 1995)
  - ⇒ Development of Infraction/Citation Program. (In Progress)
  - ⇒ Automation of Examination Process. (In Progress)
  - ⇒ Photographic Licensure Program. (In Progress)
  - ⇒ Performance of occupational analysis and validation of licensure examination. (In Progress)
  - ⇒ Development of "Performance Criteria" for Cosmetology and other related courses, "A Guide for Safe Practice in the State of California." This is used as instructional guide for cosmetology instructors. (1993)
  - ⇒ Development of a comprehensive curriculum on hazards associated with the barbering and cosmetology workplace. (1993)
  - ⇒ In cooperation with the Centers for Disease Control and DHS, developed regulatory standards for disinfection, sanitation and sterilization of equipment

and instruments used by its licensees. (Date Unknown)

⇒ There was no legislation introduced on behalf of the board over the past three years.

***2. The board's proposed administrative, regulatory and legislative changes do address some of the basic problems which are identified in this report.***

- Some of the proposed administrative, regulatory and legislative changes are as follows: (Some of the problems with each are outlined.)

⇒ The board wants to expand its authority to include regulation of currently unregulated practices such as body piercing, permanent cosmetic tattooing, tanning and body massage services as they occur in licensed establishments. (The board already has authority over tanning services in licensed establishments, but recommended that DHS assume responsibility. Prior legislation has given DHS authority over body piercing and permanent cosmetic tattooing. Local ordinances have regulated massage services.)

⇒ Establish a new license category and curriculum for “hairstylists” which excludes nail and skin care. (No justification is given for the new licensure category.)

⇒ Expand the board’s enforcement authority over schools so they can take disciplinary action against school owners who do not adhere to mandated disinfection, sanitation and sterilization requirements. (Council for Private Postsecondary and Vocational Education has sufficient authority to deal with schools which are not in compliance with applicable health and safety laws. Under Section 94332 of the Education Code, the Council may initiate the revocation of an institution’s approval or authorization for the violation of any of its rules and regulations.)

⇒ Provide for uniform testing and licensure of all instructors by the board as a prerequisite to certification by the Council before allowing them to teach in school. (The intent of the “merger bill” was to sunset the board authority over instructors by July 1, 1997. At that time, the Council would assume complete responsibility for the certification of instructors. Dual jurisdiction over instructors appears to be unnecessary.)

⇒ Provide for daily electronic administration of the written examination, and validation of all exams. (The need for both written and practical examinations seems unclear, especially due to the expense and commitment of time and energy by the board. Graduation from an approved school may be sufficient along with the requirement of some type of exam provided by the school.)

- ⇒ Expand the board's regulatory authority to take action against unlicensed practitioners and establishments where unlicensed activity occurs. (It is unclear why the board delayed in resolving this issue and did not move ahead with regulations to implement cite and fine authority.)
- ⇒ Legislation to define what is "unprofessional conduct" by a licensee and grounds for disciplinary action. (It is unclear why the board delayed in resolving this issue, since some of the unprofessional activity mentioned has probably been occurring for some time.)

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2.

**REVIEW OF NEED FOR STATE LICENSING AND REGULATION OF  
BARBERING, COSMETOLOGY, AND ELECTROLYSIS**

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ISSUE: Should the State continue with the licensing and regulation of barbers, cosmetologists, electrologists, estheticians, manicurists, and their establishments, and barbering and cosmetology instructors, and if not, should some other alternative form of regulation be recommended?
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**RECOMMENDATION:**

*It appears as though the Department should only continue with the licensing and regulation of those occupations which are involved in the use of potentially dangerous chemicals or procedures. However, the Department should investigate further whether the current licensing and regulation of barbers, cosmetologists, electrologists, estheticians, manicurists, and their establishments, and cosmetology and barbering instructors, is necessary, or whether some other alternative to regulation would suffice.*

**FINDINGS:**

**1. *There is some evidence provided that the unregulated practice of barbering and cosmetology could potentially endanger the health and safety of the public and cause significant public harm, but most of the precautions and procedures required or suggested by the board are for the safety and health of the professional not the client/customer.***

- The board points out that there are two primary health and safety reasons for regulating these occupations, and inspecting licensed establishments: (1) to prevent the misuse of chemicals which could cause severe injury to the public; and (2) to ensure compliance with health and safety laws, rules and regulations that prevent the spread of infectious bloodborne diseases such as HIV/AIDS and Hepatitis B as well as fungal, viral and bacterial infections.
- **Potential hazards in use of chemicals.** The publication provided by the board, Health and Safety for Hair Care and Beauty Professionals: A Curriculum on Hazards at Work (H&S Curriculum), is used in schools of barbering and cosmetology to provide health and safety training. It describes in detail the various types of hazardous chemicals which may be found in hair care and beauty products. It also describes the possible side effects each chemical may have and what steps the professional should take to protect themselves. There is hardly any mention made of protecting the consumer/customer

from the use of chemicals in salons or shops.

- Most of the health and safety hazards associated with these chemicals, have to do with prolonged exposure to the product or individual sensitivity of the user, which in most instances will only cause minor eye, nose, throat, lung or skin irritation and dermatitis (usually a “skin rash”). In some instances there may be an allergic reaction to a particular chemical. There are also some hair coloring products which may contain “coal tar dyes,” which may cause cancer if absorbed through the skin during long-term use. (It is interesting to note, that the federal Food and Drug Administration (FDA) tried to ban coal tar dyes, but the hair dye manufacturers strongly objected. Under pressure from the industry, FDA agreed not to ban these ingredients but instead required a label. The label requires a preliminary test to prevent skin irritation but mentions nothing about the product causing cancer.)
- One scientific study has found that cosmetologists exposed to certain chemicals in “large amounts” had more miscarriages than other women, and some other studies have shown that some chemicals in manicuring and sculptured nail products (like glycol ethers) can cause birth defects and infertility in laboratory animals. Another hazard, associated with the use of chemicals, includes a condition called *storage disease*; a condition which occurs from longtime exposure to hairspray and causes upper respiratory problems and infections.
- In the “H&S Curriculum,” the board provides examples of chemical accidents which can occur. They include chemicals which can catch fire or explode, can spill or leak, if mixed improperly, can react in ways not expected, cause accidents if they’re not stored properly, can hurt people or the environment if disposed of improperly. (There is no mention made of using chemicals improperly on clients.)
- In the “H&S Curriculum,” the board has provided a description of five key ways to reduce chemical hazards from occurring in the workplace:
  - (1) Use a safer product and a safer process.
  - (2) Isolate the process of using chemicals by mixing chemicals in a separate vented room.
  - (3) Use a local exhaust ventilation (like a vented manicurist’s table or a fume hood) or general dilution ventilation.
  - (4) Work in a safe way by: having a written list of safe work practices in the shop; storing and disposing of chemical products properly; by not eating, drinking, or smoking near chemicals; using proper cleanup methods if spills occur; (shop owners) providing information and training about chemicals; and by keeping emergency equipment in



the shop such as fire extinguishers, eye washes, and first aid kits.

- (5) Use personal protective equipment such as gloves, eye protection (slash goggles and safety glasses), dust mask or a chemical cartridge respirator (which is hardly ever used by a cosmetologist).
- Almost all of the above concern ways to prevent injuries or harm occurring to the user of the chemical, not to the client. Throughout the entire “H&S Curriculum,” the question is asked of students: “What can you do to protect yourself?” No questions are asked concerning procedures or precautions which should be taken to protect the client/customer from chemicals.
  - **Possible spread of diseases and transmission of bacterial, fungal, and viral infections.** In the board’s “H&S Curriculum,” a description is provided of the various types of infectious and communicable diseases and infections which could be spread from the client to the licensee, or from the licensee to the client, if the appropriate procedures for maintaining sanitary conditions and proper disinfection and sterilization techniques are not followed. These include the common cold, Hepatitis A, Herpes Simplex -- Type 1, Impetigo, Lice, Ringworm, Scabies, Tuberculosis, and bloodborne diseases such as HIV/AIDS and Hepatitis B.
  - Most of the viral, fungal and bacterial infections could normally be spread by the touching of the person (or the infected area) or just breathing air contaminated with the disease. The board explains in the H&S Curriculum, that it is also possible (“though unlikely”) for the licensee to be exposed to either HIV/AIDS or Hepatitis B when they use sharp instruments like razors, clippers, or tweezers, that might puncture the client’s skin and then accidentally puncture their own, or they may pass it on to the client if the equipment is not properly disinfected.
  - For purposes of maintaining sanitary conditions and to prevent the spread of diseases or infections, the board generally requires the licensee to wash their hands with soap and water before and after serving each client, and to properly sanitize towels and disinfect equipment. (Other precautions suggested, but not required, include wearing gloves and protective eyeglasses, disposing of used razor blades, providing a cotton ball to client to stop bleeding and washing off any blood immediately.)

***2. Although use of particular chemicals, or lack of proper sanitary, disinfection, and sterilization procedures could cause injury to consumers, the actual incidence of this problem appears to be extremely rare.***

- In the “H&S Curriculum,” the board admits that all of the health problems associated with the use of chemicals might be caused by particular products used in the shop. However, some of these effects, like cancer and reproductive problems, are extremely rare. There is almost no mention made of potential harm to the consumer from the use

of chemicals by the professional. As to the possibility of being exposed to HIV/AIDS and Hepatitis B, the board admits that it is “not too likely” to occur, and that a professional has a greater chance of getting diseases off the job than in the workplace. “There have been no reported cases of barbers or cosmetologists getting infected with HIV on the job.”

- After checking with Department of Health Services, Cal/OSHA and Local Health Officers Association, there is no evidence provided that even one case involving the spread of a parasite, or contracting AIDS or some other highly communicable disease, has occurred in a cosmetology salon or barbershop setting. There have also been no complaints to any of these agencies involving the use of chemicals which have seriously injured or harmed a customer of a cosmetology salon or barbershop. However, there have been complaints by employees of these salons or shops usually concerning ventilation problems or other problems associated with using chemicals for prolonged periods of time.

***3. The current regulatory program does little to protect the consumer from any of the potential harms due to use of chemicals or in preventing the spread of communicable diseases.***

- **Inspections.** It does not appear that routine inspections conducted by the board have any demonstrable impact on the misuse of chemicals or toxic compounds by licensees, control of parasites, or in protecting the public from the spread of HIV, Hepatitis B and other communicable diseases, or even revealed that these particular problems exist within establishments. Generally, inspections concern general cleanliness and whether the licensee is using appropriate equipment and supplies. It is rare that inspections reveal whether appropriate sanitary and disinfection procedures are being followed to prevent the spread of parasites and disease, or whether chemicals are being used improperly. Parasites or diseases would most likely be spread by direct contact or by reuse of contaminated implements. Therefore, the disinfection of implements before and after use, washing the hands before and after providing services, and not using linens/smocks on more than one patron, are the critical behaviors which inspectors rarely observe on an ongoing basis (especially due to the limited time inspectors spend in establishments, 20 to 40 minutes).
- Nowhere, on the listing of violations which may be cited by the inspector, does the term “misuse of chemicals” appear, nor is there any mention made concerning the action which may taken by the inspector if they observe chemicals being used improperly. For inspections performed over the past three years, there was no indication that inspectors had observed a licensee using chemicals inappropriately.
- **Disciplinary Actions.** A review of all disciplinary actions taken by the board for the past three years, indicates that only one license has been revoked due to improper chemical usage and where medical attention was necessary. There were only 8 cases

where an accusation was filed that even dealt with the misapplication or improper use of chemicals by a licensee.

**4. *The FDA, Cal-OSHA, Cal-EPA, the Department of Health Services and local health agencies, all have individual jurisdiction over the use of toxic substances and chemicals within these establishments, preventing the spread of communicable diseases, and enforcing health and safety laws. They can also inspect these establishments, if necessary, and take appropriate action to ensure they are in conformance with the applicable laws.***

- The federal Food and Drug Administration (FDA) regulates cosmetic products, including almost all of the products which contain harmful chemicals. The FDA prohibits the use of certain hazardous chemicals in cosmetic manufacturing and requires products to be labeled with a chemical declaration which can be read and understood by “ordinary individuals under normal conditions of purchase,” and provide the necessary warnings. It also requires a patch test to be given to determine any allergic reaction to hair coloring products containing coal tar.
- The Division of Occupational Safety and Health, under the Department of Industrial Relations, (Cal/OSHA) has authority under Section 6309 of the Labor Code to investigate any business establishment if it learns, or has reason to believe, that it is not safe or may be injurious to the welfare of any employee. Although Cal/OSHA is only concerned with assuring that the workplace is safe for employees, many of the complaints received by this agency concerning salons and shops deal with ventilation issues or the use of toxic or chemical substances, which not only affect the consumer, but the employee as well.

Under the Cal/OSHA Hazard Communication Standard, schools and salons are required to obtain an information sheet from the supplier or manufacturer of every chemical product used in the workplace. These are called Material Safety Data Sheets (MSDSs). The schools and anyone employing licensees must maintain a file of MSDSs and make them available for any employee to see and copy on request. The MSDS is the primary source of information describing the hazardous properties of each chemical product used in the profession. It contains information on potential health hazards, proper handling and disposal methods and emergency first-aid procedures. Schools are responsible under the Hazard Communication Standard to train and familiarize both their staff and students about hazardous chemicals present in their facilities. (The board indicates in its “H&S Curriculum” that many employers have not obtained MSDSs, and even if they have, the MSDS information is incomplete.) For certain chemicals, Cal/OSHA has set a “Permissible Exposure Limit” (PEL). The PEL is the highest amount of the chemical to which a worker can legally be exposed, on the average, during an eight-hour day. If an inspection is conducted by Cal/OSHA, the inspector may measure the amount of a chemical in the air to see if it’s higher than that which is permitted under the law.

Cal/OSHA also has rules on “Occupational Exposure to Bloodborne Pathogens.”

(Section 5193 of the California Code of Regulations, Title 8, General Industry Safety Orders.) These rules are designed to protect workers against Hepatitis B, HIV/AIDS, and other diseases spread by blood. They cover all workers who “reasonably anticipate” contact with blood on the job. Most of those directly affected are healthcare and public safety workers, but the rules would also seem to cover barbers and cosmetologists since they have some chance of blood exposure on the job. The rules require, among other things, a written “Exposure Control Plan” that identifies who has exposure to blood and how to reduce the danger, and to provide workers with information and training on the best ways to control exposure. As with all Cal/OSHA regulations, employers can be cited and fined if they don’t follow these rules.

A new Cal/OSHA standard requires all employers in California to have an “Injury and Illness Prevention Program.” The plan must identify who is responsible for health and safety in the workplace, set up a system to communicate with all workers about health and safety, identify and evaluate all workplace hazards using such methods as regular inspections, find methods to correct unsafe work practices and conditions, provide health and safety training, set up a process to investigate accidents and illnesses, and encourage workers to report hazards on the job without fear of firing or discrimination.

Independent contractors are not covered by Cal/OSHA. There are possibly many shops where the licensee is considered as an employer or independent contractor. (In one survey conducted by the board, over 56% of the practitioners considered themselves as an employer or independent contractor.) However, there are also many of these shops, which because of the control they have over the licensee in their day-to-day activities, have created an employer-employee relationship versus an independent contractor relationship.

- The California Environmental Protection Agency (Cal-EPA) and the Department of Health Services (DHS) both regulate the use of dangerous or toxic chemicals, including adulterated or misbranded cosmetics. Cal-EPA is directly responsible for enforcing Proposition 65, the Safe Drinking Water and Toxics Enforcement Act to assure that the public is properly warned about substances containing toxic chemicals. (There is a list of over 250 such substances.) For example, Toulene, which is a solvent used in most brands of nail polish, was added to the state’s list in January 1991. DHS, under the Sherman Food, Drug, and Cosmetics Law (Section 109875, et seq., Health and Safety Code), has broad authority to protect the public against the use of any dangerous drugs or devices or the use of any adulterated or misbranded cosmetic. DHS also has the responsibility to investigate and prevent the spread of any environmental and occupational diseases, and to assess, prevent and interrupt the transmission of HIV. Any person who violates any of the laws pertaining to the use (or misuse) of certain chemicals, or in not taking the appropriate precautions necessary to prevent the spread of infectious diseases, could be subject to imprisonment and/or a fine.
- Local county health departments and health officers have a duty under Section 120175 of the Health and Safety Code to take any measures necessary (even closure of the

establishment) to prevent the spread of any disease or occurrence of additional cases. They also have broad powers under Sections 101025 and 101030, to take any measures necessary to preserve and protect the public health and enforce laws and regulations pertaining to public health and sanitary matters.

***5. Consumers are capable of making informed choices about the shops and salons they frequent and the chemicals which are used.***

- Consumers are capable of understanding cosmetology and barbering services, judging the quality of those services and determining if the salon or shop is too unsanitary for their use. Almost all of the tasks and activities protected under licensing as “scope of practice,” are those same tasks and activities which consumers may sometimes perform on themselves, friends or family members.
- The products which contain harmful or dangerous chemicals are not restricted to use by just cosmetologists or barbers, in fact, they are sold over the counter at any retail or drug store. And just because a product may be labeled “to be used by professionals only,” does not mean that product is more dangerous than a similar product sold at retail level. The barber or cosmetologist can even resell the product to the general public if they so desire.

***6. The “repeat business” dynamic of the normal marketplace has considerable force here. It is reasonable to assume that no consumer would return to a barber or cosmetologist who is incompetent, and the practitioner would quickly go out of business.***

- The market serves adequately to allow the consumer to choose competent practitioners. Most consumers have sufficient personal experience in the selection of these services to make intelligent, informed choices. Again, because patrons of these services have extensive experience in their selection, most consumers are capable of questioning barbers and cosmetologists regarding the services to be performed, assuming the consumer has no other basis for comparison.
- Further, this market mechanism will “weed out” practitioners who are undertrained or incompetent. It can certainly be argued, in fact, that many incompetent practitioners would be “weeded out” before they could significantly endanger the public. It is common knowledge that much of the cosmetology business is generated by patron referrals. Indeed, highly successful practitioners bring a clientele with them and that is one of the ways in which the practitioner markets him or herself to a desirable shop or

salon. Therefore, consumers and employers, by choosing the best qualified practitioners, will eliminate from the marketplace those barbers and cosmetologists not qualified to practice.

- The market may also control the sanitation standards of the industry. The desire for repeat business is strong motivation for the owner to keep shops and salons clean, and to assure that equipment is properly sterilized. If even one case of a person suffering harm from the misuse of chemicals or contracting some communicable disease from a shop or salon is made public, it is more than likely the consumer will patronize another establishment which provides better sanitation and sterilization procedures.

***7. There are other occupations that have equal or greater risk of transmitting communicable diseases which are not regulated to the same degree as cosmetologists and barbers.***

- Other occupations such as tattooing, body piercing, permanent cosmetic tattooing, and massage therapy are unlicensed and are not routinely inspected, and may have an equal or greater risk of transmitting diseases.  
The first three practices involve the use of a needle or other penetrating device which if not properly sterilized could spread Hepatitis B and the HIV/AIDS viruses.
- There have been efforts, however, to at least regulate tattooing, body piercing and permanent cosmetic tattooing. AB 487 was introduced in 1995, and would have directed the Department of Health Service to establish sterilization, sanitation, and safety standards. (This bill has not been successful, to date, in passing out of the Assembly.) The board had recommended amendments to this bill which would allow it to regulate these activities through board licensing and development of health and safety standards, since some of these practices were already being performed by licensees in a licensed setting. (The amendments were not accepted as of the date of this report.)

***8. Civil remedies are available in cases of extreme injury.***

- In cases of extreme injury, a consumer who is harmed by the incompetence or negligence of a practitioner may seek damages through civil court proceedings. In lesser cases, the consumer would be able to accomplish this without the services of an attorney through small claims court. Many complainants who receive unsatisfactory service simply want their money back. There has been no indication that the board has attempted to order the practitioners to make such a refund. Often, in cases involving this type of dispute, the complainant goes to another practitioner to correct the “damage.” Use of civil proceedings by consumers would have a deterrent effect on incompetent practitioners and, in significant cases, would provide monetary damage to the consumer.

***9. All 50 states license cosmetologists; 49 states license barbers; approximately 48 states license estheticians or consider the practice as that of a cosmetologist; approximately 45 states license or consider the practice of a manicurist as that of a cosmetologist;***

***approximately 30 states license electrologists. However, there have been some states which have reduced the level of regulation for barbering and cosmetology.***

- The occupation of barbering was deregulated in Alabama in 1982. There have been no identifiable sanitation, health or safety problems resulting from or associated with the unregulated occupation. The Oregon state board does not administer a practical examination or regulate beauty or barber schools, however, barber and cosmetology schools continue to administer a practical examination to their students so that the student is competitive in the workplace. The Washington state board does not regulate salons or shops. This reduced level of regulation has not resulted in any serious threats to the public safety in Washington. Sunset and performance reviews in Arizona, Colorado, Florida, Georgia, Hawaii, Oregon, and Washington have either recommended deregulation or a reduced level of regulation of the occupations of barbering and cosmetology. Intense opposition and activity by the industry, however, resulted in the continuation of regulation. However, several states, including those mentioned, have made significant changes to the existing regulation without any negative impact on the health, safety or welfare of the public.

***10. It does not appear that barbers and cosmetologists make judgments which require a high degree of skill or knowledge, however, their judgments are, for the most part, independent of oversight or supervision.***

- The level of education to enter a cosmetology school can be as low as the 9th grade, as long as the student has attained the level of 10th grade education before licensure. Although the 1600 hour requirement is somewhat lengthy, the curriculum is more of a “seat and practice” requirement. There is even some question as to whether schools are turning out competent candidates. Because schools receive considerable public funding from state and federal job training programs, the primary focus of schools is in meeting the minimum requirements so they can qualify for these funds. As indicated

earlier, public health and safety standards are secondary, since only 20 hours of the 1,600-hour required cosmetology curriculum must relate to disinfection and sanitation.

- The board provides a listing of the types of judgments that practitioners make on a daily basis, most deal with: the costs of the service or product used; the correct procedures for use of chemicals, sanitation and sterilization of equipment; and, the proper use of the tools of the trade. All of these judgments and activities are those which the public may make or perform on themselves on any given day. They do not require a high degree of skill or knowledge.
- There are a significant number of licensees who operate independent of any oversight or supervision. According to a “Licensee Survey” conducted by the board, over 56% of the practitioners either consider themselves employer or independent contractors. Only 36%

of those consider themselves employees. And even as employees, their judgments are made for the most part without any supervision or oversight by their employers.

**11. *There is a generally accepted core amount of knowledge, skill and ability that a barber and cosmetologist must have to meet minimum competency requirements, and which are measurable by objective, written and performance standards. However, whether any requirements are necessary beyond attending a qualified school is unclear.***

- The board states that the practical examination tests the manipulative skills that define the knowledge, skill and abilities for safe practice and the written examination test for cognitive knowledge necessary for safe practice. However, because the board has been lax in conducting occupational analyses and validation studies for its examinations, it is difficult to determine whether or not they are testing the appropriate knowledge, skills, and abilities necessary to practice in the cosmetology or barbering field.
- Since March of 1995, the Department's Office of Examination Resources (OER) has been reviewing the board's entire examination process - from test development and validation to actual administration. The OER believes that candidates should be tested in areas which may pose a threat to the consumer, those being health and safety standards, the use of harmful chemicals, and the ability to safely use the tools and equipment required in the trade. As argued by the board, whether or not applicants would have the knowledge, skill and abilities to practice their trades safely and effectively upon graduation depends upon the effectiveness of the schools. The board further states that its examination statistics reflect a need for an examination to measure minimum competency. There is no argument made concerning whether or not schools could provide a comparable examination prior to graduation from an approved school.
- It is unclear whether examination statistics prove anything beyond the fact that some pass and some will fail a particular examination. The examination may be testing knowledge, skills and abilities wholly unrelated to the concerns outlined by OER, and may be more difficult than necessary to assure that practitioners meet minimum levels of professional competency to ensure consumer protection. Also, if there is some concern about whether schools are teaching the appropriate knowledge, skills and abilities necessary (even though they are using board approved curriculum) a standard examination could be provided by the schools for all students who complete their coursework and hourly requirements. The examination should be developed in accordance with validation and occupational analyses conducted by the board and OER. (It is interesting to note, that in a survey conducted by the board of 257 licensees, about 30% of the respondents agreed that a school of barbering, cosmetology or electrology could determine if a graduate is adequately prepared to practice safely on the consumer if the license exam was eliminated.)

**12. *There are currently two alternatives to the traditional training received in public and/or private institutions offering barbering and cosmetology courses which can be***



***applied toward licensure -- the “apprenticeship program” and the “externship program.” Students within schools may also perform similar services on the public.***

- The board currently has in place an apprenticeship program which allows a person to obtain a license by working in a licensed establishment under the supervision of a licensee rather than attending a school of cosmetology. The apprentice is actually granted a license for a period of two years. They must receive some “pre-apprentice training” prior to serving the general public. This training must be comparable to that which a student would receive in a school before they are allowed to work on the public.
- Under the externship program, a student who is enrolled in a private school of cosmetology may, upon completion of a minimum of 60 percent of the clock hours required for graduation in the course, work as an unpaid extern in a licensed establishment which has met certain board requirements and is willing to participate in the educational program offered by the school. A person working as an extern will receive specified clock hour credit toward graduation.
- The board also allows students within schools who have received a specified amount of training to perform services on paying patrons.

***13. There does not appear to be any significant public demand for the regulation and licensing of barbers and cosmetologists.***

- Although there may be some expectation on the part of the public that barbers and cosmetologists be well trained and competent in their profession, there is no evidence provided that the public is concerned about the licensing of barbers, cosmetologists and their establishments. However, in a survey conducted by the board of 257 licensees, at least 201 felt that there is significant public demand for some level of regulation of the profession.

***14. There is no evidence that barbers or cosmetologists would be impacted economically if no longer licensed. It is unclear whether consumers may benefit or not from deregulation.***

- According to a consumer expenditure survey conducted by the U.S. Department of Commerce Census Bureau, it is estimated that the average person spends approximately \$400 per year on personal care products and services. The board estimates that \$8 billion dollars is spent annually in the areas regulated by the board. Approximate cost of services range from a low of \$15 for a hair cut to \$200 for permanent waving and straightening. (Permanent cosmetic tattooing could run as high as \$500.)
- There is no evidence provided that barbers or cosmetologists would be impacted economically if no longer licensed. The license fees incurred by practitioners is low, only \$35 to \$50 every two years and there is no indication that licensees have increased

their cost of services due to licensure.

- This is a highly competitive field and there are no regulations specifically restricting the number of person who may practice these professions, nor are there any regulations specifically restricting the supply of practitioners. The board does not license everyone who applies, but this restriction is based upon standards which apply to the whole profession. It does not arbitrarily decide the number of practitioners needed in a given profession and license accordingly.

**15. *There may be other alternatives to the current regulatory program.***

- **Title Act protection with requirement that graduate from approved school.** It is not clear how many other states may only have title acts, but one of the alternatives for the state is to provide title act protection and require graduation from an approved school if the need for licensure of these professions is in question. This simplified system would require no examination, inspection of shops, or inspection of barber and cosmetology schools. The inspection functions, as discussed previously in this report, would be performed by other government agencies presently performing similar functions. Graduation from an approved barber or cosmetology school would assure that the practitioner is at least minimally competent. It would be a misdemeanor for anyone to hold themselves out as a cosmetologist, barber, etc.
- **Have schools provide practical and/or written exam.** As already argued, schools may be able to provide their own exam which meets the requirements of the Department's Office of Examination Resources. Either a written or practical examination, or both, could be required. As an alternative, schools could be required to issue a pass/fail competence certificate rather than merely a certificate of completion of the requisite hours.
- **Only license those who use potentially dangerous chemicals or procedures.** As indicated in this report, it appears as though all licensees (except instructors) use potentially dangerous chemicals or procedures. However, there are more complaints, investigations and disciplinary actions taken against cosmetologists and manicurists for the misuse of chemicals, or following incorrect procedures to prevent the spread of a fungal, bacterial or viral disease.
- **Reduced hours of training for cosmetologists and barbers or for those only cutting hair ("hairstylists").** Sufficient evidence has not been provided to justify the number of hours of training required by the board before a person may sit for the exam. More justification should be provided on the number of hours necessary to acquire the knowledge, skills and abilities necessary to assure competency in the profession. The licensure requirement could be eliminated, or hours reduced, for those who only want to cut hair. (There is currently legislation which is pending in the Legislature which would establish a separate hairstylist license and establish a shortened 1,200 hour curriculum. The board is opposed to this measure.)

- **Reduced level of inspections and/or only inspect shops or salons which have “independent contractors.”** As already indicated, it is unlikely that the current routine inspections conducted by the board have any demonstrable impact on control of parasites, transmission of communicable diseases or protection of the public from chemical dangers. Much, if not all of the inspection content, concerns general cleanliness or what may be termed as facility requirements, such as location of soap dispensers and restroom, as well as requirements for handwashing facilities and an adequate supply of approved sanitary towels and neck strips. To observe some of the behaviors which may cause some of the health and safety concerns expressed by the board, more time would be needed by the inspector, and even then, it is questionable whether such inspections would have any effect on preventing the potentially harmful conduct from occurring. Also, the board is unable to meet its current mandate of inspecting all establishments annually, and it is doubtful that increasing the number of inspectors will assure that all 44,000+ establishments are inspected (the board has had 4 vacant inspector slots over the past year).

As an alternative, establishments could be inspected on a bi-annual basis when renewal occurs, or inspections could occur only when a complaint is received. Another alternative would be to only inspect those shops or salons which have “independent contractors.” It appears as if there is substantial oversight provided by other agencies of those shops and salons which have employees. However, Cal/OSHA and some of the other agencies which are concerned with “occupational” type harms, will not inspect those facilities which have independent contractors, since their primary mission is to protect the employee in the workplace. And it is doubtful that Cal/OSHA, DHS or local health agencies would be able to assume the responsibility for inspecting establishments which have independent contractors. Their programs are presently underfunded and overburdened, and they would oppose any attempt to place additional responsibility on them without adequate funding.

If inspections by the board are to be continued, there are other health and safety concerns which should be addressed. All shops and salons should be required to: maintain current MSDSs for all of the harmful chemicals which are used by licensees; there should be a written “Exposure Control Plan” to identify who has exposure to blood and how to reduce the danger; there should be an “Injury and Illness Prevention Program” which would include the “do’s and don’ts” of using chemicals and guidelines for safe working practices; there should be an “Emergency Plan” to handle chemical accidents; protective equipment, such as gloves and eyeglasses, should be made available to all workers who request them. The shop and salon should also be required to make their own health and safety inspection on an annual basis, using something similar to the “Workplace Inspection Checklist” as provided in the board’s H&S Curriculum.

**No inspections of schools or licensing of instructors.** As earlier explained, the Council for Private Postsecondary and Vocational Education has broad authority over cosmetology, barbering and electrology schools. The

Council has experience in reviewing and approving trade-type schools, and in assuring that they provide the appropriate curriculum and comply with safety and health requirements.

The Council also uses its own criteria in evaluating instructors and providing a “certificate of authorization” for service. The board’s licensing of instructors is not a prerequisite to receiving certification, so it is only one of the considerations made by the Council in providing a certificate. There does not appear to be any reason for requiring both licensure and certification, one or the other should suffice. This is the primary reason why a sunset date was placed on the licensure provisions. The statutory provisions relating to licensing of instructors should be allowed to sunset on July 1, 1997. The board could still serve in an advisory capacity to the Council as it pertains to the curriculum provided in schools and the certification of instructors.